

member is about equal to the height of the notched plate (page 5, lines 2 to 4); and the descending member is rigid and non-pivoting (Figs. 1 to 9).

Claim 2 has been cancelled because its recitation has been included in claim 1.

Claim 3 has been amended to change its dependency.

Claims 6 to 10 have been cancelled in accordance with the election.

### THE APPLICANT'S INVENTION

A very brief review of the Applicant's notched trowel may be helpful. The Applicant's notched trowel contains a rigid and non-pivoting descending member that contacts the substrate during use so that a constant angle between the notched edge and the substrate is maintained. The position of the descending member behind the notched edge ensures that the gap created in the bonding material when the descending member passes along the substrate is eliminated by the notched edge.

### THE SECTION 102 REJECTION BASED ON GASTON

Claims 1 to 3 were rejected under 35 U.S.C. § 102(b) as being anticipated by Gaston, U.S. Patent No. 3,611,470. Anticipation requires the presence in a single prior art reference of each and every element of the claimed invention arranged as in the claim.

Gaston discloses an adhesive spreader with a long handle that enables the spreader to be used in the standing position. When in use, the blade makes an angle of 45 to 55 degrees to the floor. See col. 6, lines 25 to 27. When the spreader is not in use, the handle can be held in an upstanding supporting position by resting it on a support leg. See col. 4, lines 12 to 15. Therefore, when the spreader is not in use and resting on the support leg, the angle made by the blade is substantially less than 45 degrees.

The length of the support leg is at least double or triple the height of the notched plate. The support leg does not contact the floor during use of the spreader. Instead, it pivots so that it can be placed along the bottom portion of the handle when in use.

The Examiner stated that the support leg could be considered to be the descending member as recited in original claim 1. The Applicant submits that the support leg of the Gaston adhesive spreader does not contact the substrate to maintain the angle of the notched edge at 45 to 90 degrees, does not have a length about equal to the height of the

notched plate, and is not non-pivoting as recited in amended claim 1. Accordingly, the Applicant believes the amended claims recite patentable subject matter.

#### THE SECTION 102 REJECTION BASED ON HOLLIDAY ET AL.

Claims 1 to 3 were rejected under 35 U.S.C. § 102(b) as being anticipated by Holliday et al., U.S. Patent No. 6,243,906. Holliday et al. disclose an ice scraper having three scraping blades, two of which are notched and one of which is smooth. Each of the three blades runs the full width of the scraper.

The Examiner stated that the smooth blade could be considered to be the descending member as recited in original claim 1. The Applicant submits that the smooth blade of the Holliday et al. ice scraper does not have a width of less than about one-half inch as recited in amended claim 1. Accordingly, the Applicant believes the amended claims recite patentable subject matter.

#### THE SECTION 102 REJECTION BASED ON GIUSTINO

Claims 1 to 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Giustino, U.S. Patent No. 3,366,987. Giustino discloses a grill scraper having two blades with a pad of steel wool held in between. The blades and steel wool are held together with a screw 13.

The Examiner stated that the screw could be considered to be the descending member as recited in original claim 1. The Applicant submits that the screw of the Giustino grill scraper does not contact the substrate and maintain the angle of the notched edge at 45 to 90 degrees as recited in amended claim 1. Accordingly, the Applicant believes the amended claims recite patentable subject matter.

#### THE SECTION 102 REJECTION BASED ON SOUREK

Claims 1 to 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sourek, U.S. Patent No. 1,008,382. Sourek disclose a tree bark scraper having two sets of fingers that “adapt themselves and conform to the various irregularities of the surface over which they are passed to cause them to resiliently and yieldably engage the same to effectually clean all portions over which the tool is passed.”

The Examiner stated that one of the fingers could be considered the descending member as recited in original claim 1. The Applicant submits that the Sourek tree bark scraper contains resilient fingers rather than a rigid and non-pivoting descending member as recited in amended claim 1. Accordingly, the Applicant believes the amended claims recite patentable subject matter.

### CONCLUSION

None of the four references cited teaches or suggests a notched trowel with a rigid and non-pivoting descending member for maintaining the angle the notched edge makes to the substrate. The amendments to claim 1 clearly distinguish the structure of the Applicant's notched trowel. In view of the amendments and the above remarks, allowance of amended claims 1 to 5 is requested.

Respectfully submitted,

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### CERTIFICATE OF MAILING

Philip L. Bateman certifies that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 14, 2005.

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